



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

January 10, 2017

By ECF

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Ahmed Mohammed El Gammal, 15 Cr. 588 (ER)

Dear Judge Ramos:

The Government writes to inform the Court of an issue that it intends to raise at the start of tomorrow's trial day. Counsel informed the Government this evening that they will seek to offer into evidence the following specific items:

- 16 GB Silver USB Thumbdrive
- iPhone 5s
- Sony Cybershot Camera
- GoPro Camera
- Avondale Smoke Shop card
- Arizona Voter Identification card

To ensure that the trial is conducted in a manner such that "inadmissible evidence is not suggested to the jury by any means," Fed. R. Evid. 103(d), the Government intends to request that the Court exercise its discretion pursuant to Federal Rule of Evidence 104(a) to "decide [a] preliminary question about whether" the items the defense seeks to introduce "[are] admissible." The Government respectfully submits that the proffered evidence is irrelevant and inadmissible pursuant to Federal Rules of Evidence 401, 402, and 403, as well as barred by the rules against hearsay.

Initially, the defense has articulated no specific theory of relevance for these items other than presumably the contention in today's proceedings that "Gammal lived as an average American in an average American suburb in an average American state in the United States of America." (Trial Tr. at 343-44). As the proponents of the proffered evidence, the defendant bears the burden of demonstrating the evidence's admissibility. *See, e.g., United States v. Rajaratnan*, No. 13 Cr. 211 (NRB), 2014 WL 2696568, at *3 (S.D.N.Y. June 10, 2014); *United States v. Camacho*, 353 F. Supp. 2d 524, 535 (S.D.N.Y. 2005). As the Government will argue at tomorrow's proceedings, this purported fact has no bearing whatsoever on the defendant's guilt

cc: Sabrina P. Shroff/Annalisa Mirón/Daniel Habib
Counsel for Ahmed Mohammed El Gammal